

GLOBAL RESPONSES TO TERRORISM AND NATIONAL INSECURITY: ENSURING SECURITY, DEVELOPMENT AND HUMAN RIGHTS

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"Terrorism attacks the values that lie at the heart of the Charter of the United Nations: respect for human rights, the rule of law; rules of

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war that protect civilians, tolerance among peoples and nations; and the peaceful resolution of conflict. Terrorism flourishes in environments of despair, humiliation, poverty, political oppression, extremism and human rights abuse; it also flourishes in contexts of regional conflict and foreign occupation; and it profits from weak State capacity to maintain law order".¹

I. INTRODUCTION

The terrorist attacks in London² and Egypt³ and other parts of the world have once again reinforced the attention of the international community on the problem of "terrorism."⁴ Earlier, the September 11th attacks in New York and Washington D.C. generated global attention to respond to terrorism and countries launched a bevy of responses, including passing new laws that would

1. The Secretary General, *Report of the Secretary General's High-level Panel on Threats, Challenges and Change—A More Secure World: Our Shared Responsibility*, at 47, ¶145, U.N. Doc A/59/565, available at <http://www.un.org/secureworld/> (last visited Aug. 6, 2005) [hereinafter *More Secure World*].

2. See *London Under Attack*, N.Y. TIMES, July 8, 2005, at A22. See also Press Release, Security Council, Security Council Condemns 'Barbaric' London Terrorist Attacks, Unanimously Adopting Resolution 1611, U.N. Doc SC/8438 (July 7, 2005), available at <http://www.un.org/News/Press/docs/2005/sc8438.doc.htm> (last visited Aug. 6, 2005).

3. See *Security Council Condemns Weekend Terrorist Bombing in Egypt*, U.N. NEWS CENTRE, July 27, 2005, <http://www.un.org/apps/news/story.asp?NewsID=15183&Cr=terror&Cr1> (last visited Aug. 6, 2005).

4. This article does not go into a detailed discussion on the definition of terrorism. There may be greater consensus for the definition of terrorism given the U.N. Secretary General's report, "In larger freedom: towards development, security, and human rights for all," in which he observed: "I endorse fully the High-level Panel's call for a definition of terrorism, which would make it clear that, in addition to actions already proscribed by conventions, any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a Government or an international organization to do or abstain from doing any act." The Secretary-General, *Report of the Secretary-General — In Larger Freedom: Towards Development, Security and Human Rights For All*, at 26, ¶ 91, U.N. Doc. A/59/2005 (Mar. 21, 2005, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/270/78/PDF/N0527078.pdf?OpenElement> (last visited Aug. 6, 2005) [hereinafter *In Larger Freedom*]. But in his report, he has also observed, "It is time to set aside debates on the so-called 'State terrorism'." *Id.* Even to support the definition of terrorism that is proposed by the Secretary General, I don't think this statement is necessary. It is important to recognize that experience has demonstrated that states have used anti-terrorism laws to suppress dissent and to discourage democratic movements and also to resist human rights accountability. These activities of suppression may sometimes rise to the level of "State terrorism" and/or "State-sponsored terrorism" when the violence committed by the state apparatus reaches alarming levels and innocent civilians have been victimized. But the question is whether these acts should come under the ambit of the definition of terrorism or if they should remain within the existing frontiers of international law. This is a different debate not addressed in this article. For further reading, see Susan Tiefenbrun, *A Semiotic Approach to a Legal Definition of Terrorism*, 9 ILSA J. INT'L & COMP. L. 357 (2003).

strengthen the anti-terrorism legal framework, tightening immigration policies⁵ and raising the bar of suspicion on allegedly disloyal persons.⁶ These laws have had wide implications for human rights and civil liberties.⁷ There are signs that even academic freedom is threatened due to the war on terror.⁸ A number of writings on this subject are concerned with the consequences of anti-terror laws on human rights.⁹ These writings have pointed out how the so-called "war on terror" has systematically compromised human rights and undermined international law and how they can be resisted.¹⁰ The grave examples of breach of international law and international human rights law to contain terrorism include, but are not limited to, the detention of people in Guantanamo Bay¹¹ who are suspected by the U.S. to be terrorists and also the systematic abuse of prisoners in Abu Ghraib.¹² Even more recently, questions concerning the rendition of alleged terrorists to countries where they may encounter abuse or torture and the jailing of terrorists by the US in Europe have caused controversy.¹³

5. See generally Raquel Aldana & Sylvia R. Lazos Vargas, "Aliens" In Our Midst Post-9/11: Legislating Outsideness Within the Borders, 38 U.C. DAVIS L. REV. 1683 (2005).

6. See Sameer M. Ashar, *Immigration Enforcement and Subordination: The Consequences of Racial Profiling After September 11*, 34 CONN. L. REV. 1185 (2002).

7. See generally Emanuel Gross, *Legal Aspects of Tackling Terrorism: The Balance Between the Right of a Democracy to Defend Itself and the Protection of Human Rights*, 6 UCLA J. INT'L L. & FOREIGN AFF. 89 (2001).

8. See Michael A. Olivas, *The War on Terrorism Touches the Ivory Tower—Colleges and Universities After September 11: An Introduction*, 30 J.C. & U.L. 233, 235–6 (2004).

9. See Editorial, *Terrorism and Human Rights*, EUR. H. R. L. REV. 1, 1–6 (2005). See also Tracy Topper Gonzalez, *Individual Rights Versus Collective Security: Assessing the Constitutionality of the Patriot Act*, 11 U. MIAMI INT'L & COMP. L. REV. 75 (2003).

10. For an important article on the subject, see Harold Hongju Koh, "The Spirit of the Laws", *Focus: September 11, 2001—Legal Response to Terror*, 43 HARV. INT'L L.J. 23, 29 (2002). See also Upendra Baxi, *The "War on Terror" and the "War of Terror": Nomadic Multitudes, Aggressive Incumbents, and the "New" International Law - Prefatory Remarks on Two "Wars"*, 43 OSGOOD HALL L. J. 7 (2005).

11. See Dianne Marie Amann, *Guantanamo*, 42 COLUM. J. TRANSNAT'L. L. 263 (2004).

12. DEBORAH PEARLSTEIN, *HUMAN RIGHTS FIRST, GETTING TO GROUND TRUTH: INVESTIGATING U.S. ABUSES IN THE WAR ON TERROR I* (2004).

13. For further reading, see THE COMMITTEE ON INTERNATIONAL HUMAN RIGHTS OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK AND CENTRE FOR HUMAN RIGHTS AND GLOBAL JUSTICE, NEW YORK UNIVERSITY SCHOOL OF LAW, *TORTURE BY PROXY: INTERNATIONAL AND DOMESTIC LAW APPLICABLE TO EXTRAORDINARY RENDITIONS* (2004), <http://www.nyuhr.org/docs/TortureByProxy.pdf> (last visited 8 Dec. 2005).

Human rights NGOs like Amnesty International¹⁴, Human Rights Watch¹⁵ and Human Rights First¹⁶ (earlier known as Lawyers Committee for Human Rights) have written and compiled numerous reports on this subject.¹⁷ Even at the U.N., the Office of the High Commissioner for Human Rights has recognized that the war on terror should not disrespect human rights and that in our zeal and enthusiasm to fight terrorism and to protect national security¹⁸, human rights and civil liberties¹⁹ cannot be compromised.²⁰ There is, of course, another issue that is not well covered in media or legal literature- civilian casualties in Afghanistan and Iraq as a consequence of the war on terror. The civilians reported killed by military intervention in Iraq, minimum: 23,456 and maximum: 26,559. These figures grossly demonstrate the futility of war and large scale victimization that it effects on the families of the civilians who are killed, which, in military terms, is called "collateral damage."²¹

To further add to the existing discourse, the U.N. Secretary General constituted a High-level Panel on Threats, Challenges and Change, which submitted its report in late 2004 known as "A More Secure World: Our Shared Responsibility," in which the problem of terrorism has been further outlined and a number of recommendations have been given.²² The Secretary General, while preparing for the Meeting of the Heads of State and Government that was held

14. Amnesty Int'l, Rights at Risk, Amnesty International's concerns regarding security legislation and law enforcement measures, AI Index ACT/30/001/2002, Jan. 18, 2002, available at <http://web.amnesty.org/library/index/engACT300012002?OpenDocument> [hereinafter Rights at Risk].

15. HUMAN RIGHTS WATCH, IN THE NAME OF COUNTER-TERRORISM: HUMAN RIGHTS ABUSES WORLDWIDE: A HUMAN RIGHTS WATCH BRIEFING PAPER FOR THE 59TH SESSION OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS 10-11 (2003), available at www.hrw.org/un/chr59/counter-terrorism-bck.pdf.

16. DEBORAH PEARLSTEIN & PRITI PATEL, HUMAN RIGHTS FIRST, BEHIND THE WIRE: AN UPDATE TO ENDING SECRET DETENTIONS (2005).

17. See generally Amnesty Int'l, United States of America: The threat of a bad example: undermining international standards as "war on terror" detentions continue, AI INDEX AMR/51/114/2003, Aug. 19, 2003, available at <http://web.amnesty.org/library/Index/ENGAMR511142003>; see also Amnesty Int'l, United States of America: Restoring the rule of law: The right of Guantánamo detainees to judicial review of the lawfulness of their detention, AI INDEX AMR 51/0931/2004, June 16, 2004, available at <http://web.amnesty.org/library/Index/ENGAMR510932004?open&of=ENG-USA>.

18. See Sandra Coliver, *Commentary to: The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, 20 HUM. RTS. Q. 12 (1998).

19. See *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, reprinted in 7 HUM. RTS. Q. 3 (1985).

20. See generally David B. Kopel & Joseph Olson, *Preventing a Reign of Terror: Civil Liberties Implications of Terrorism Legislation*, 21 OKLA. CITY U. L. REV. 247 (1996).

21. For further information, see Iraq Body Count Homepage, <http://www.iraqbodycount.net> (last visited Aug. 6, 2005).

22. *More Secure World*, *supra* note 1.

in New York in September 2005 to commemorate the fifth anniversary of the passing of the Millennium Declaration, submitted a report to the General Assembly in March 2005 entitled "In Larger Freedom: Towards Development, Security and Human Rights for All."²³ However, this was not sufficiently followed up in the outcome of the Millennium Summit in September 2005.²⁴

The present article firstly provides an overview of how both terrorism and global efforts to contain it violate human rights, undermine the rule-of-law, and systematically destabilize governments, societies and people. This part will focus on the problem and the need for the international community to seriously address terrorism with a view to solving it or at least reducing the incidence of attacks.²⁵

Second, the article provides a critical appraisal of the report of the U.N. High-Level Panel and its potential use to garner greater support from the international community for responding to the threats in a unified and comprehensive manner.

Third, the article will critically examine the report of the U.N. Secretary General, "In Larger Freedom: Towards Development, Security and Human Rights for All," presented to the U.N. General Assembly in March 2005 with a view to understanding its broader implications for ensuring security, promoting development, and protecting human rights.²⁶ The key question is whether it has successfully challenged the contemporary discourse on the "war on terror"²⁷ and "national security strategies", or merely reinforced these statist notions by over-emphasizing the role of the state.

Fourth, the article examines the need for understanding the problem of terrorism in a holistic manner so that human security,²⁸ human development, and human rights are all put into the rule-of-law framework.²⁹ This means that all strategies that are intended to ensure collective security³⁰ and development

23. *In Larger Freedom*, *supra* note 4.

24. See 2005 Word Summit Outcome, Sept. 15, 2005, U.N. Doc A/60/L.1, available at <http://www.globalpolicy.org/msummit/millenni/2005/0913thirteenth.pdf> (last visited Dec. 8, 2005).

25. See Jeffrey F. Addicott, *Legal and Policy Implications for a New Era: The "War on Terror"*, 4 SCHOLAR 209 (2002).

26. Priyanka Upadhyaya, *Human Security, Humanitarian Intervention and Third World Concerns*, 33 DENV. J. INT'L L. & POLY 71 (2004).

27. See Upendra Baxi, *The "War on Terror" and the "War of Terror": Nomadic Multitudes, Aggressive Incumbents and the "New" International Law*, 43 OSGOOD HALL L.J. 7 (2005).

28. Roland Paris, *Human Security: Paradigm Shift or Hot Air?*, 26.2 INT'L SEC. 87-102 (2001).

29. See ELLEN SEIDENSTICKER, HARVARD UNIVERSITY, KENNEDY SCHOOL OF GOVERNMENT, HUMAN SECURITY, HUMAN RIGHTS, AND HUMAN DEVELOPMENT (2002), available at <http://www.humansecurity-chs.org/activities/outreach/0206harvard.pdf> (last visited Aug. 6, 2005).

30. Martti Koskeniemi, *The Place of Law in Collective Security*, 17 MICH. J. INT'L L. 455 (1996).

ought to be within the rule-of-law framework.³¹ The rule-of-law framework should be applicable both in the domestic as well as international arenas.³²

Fifth, the article will examine the role of international institutions, including the Office of the High Commissioner for Human Rights, in developing responses to terrorism³³ and whether the U.N. Secretary General's proposal of a smaller Human Rights Council to replace the present bigger Human Rights Commission can help in formulating more effective strategies. This section will also examine whether there is a need for a paradigm shift³⁴ in responding to terrorism, particularly when the responses ought to be within the rule-of-law framework so that they do not generate further insecurity in certain communities. This may further exacerbate the threats leading to exploitation of these situations by people who are determined to commit violence against civilians to fulfill whatever goals, political or otherwise, they have in mind.³⁵ Sixth, the article examines the role of non-governmental organizations and domestic and international civil society movements in relating security to development and human rights.

The article recognizes that terrorism is a human rights violation. The responses to terrorism should be steadfast and the international community should be determined.³⁶ The international legal framework for counter-terrorism efforts needs to be strengthened.³⁷ There is no doubt that there is a real problem here.³⁸ Unfortunately, global responses to terror threats have not made the world a more secure place. Rather, it may be argued that countries have become far less secure than they were when the worldwide 'war on terror' began. Even a 2003 report by Amnesty International had observed that the "war on terror" has made the world a more dangerous place and created divisions which make conflict more likely.³⁹ And definitely, it is clear that the

31. See generally Ved P. Nanda, *Preemptive and Preventive Use of Force, Collective Security, and Human Security*, 33 DENV. J. INT'L L. & POL'Y 7 (2004).

32. See generally Anne-Marie Slaughter & William Burke-White, *An International Constitutional Moment*, 43 HARV. INT'L L.J. (2002).

33. Human Rights and Terrorism, C.H.R. Res. 2004/44, U.N. ESCOR, Comm'n on Hum. Rts., 60th Sess., U.N. DOC. E/CN.4/RES/2004/44 (2004).

34. See Diane P. Wood, *The Rule-of-Law in Times of Stress*, 70 U. CHI. L. REV. 455 (2003).

35. See generally Kevin J. Greene, *Terrorism as Impermissible Political Violence: An International Law Framework*, 16 VT. L. REV. 461 (1992).

36. See generally Chantal de Jonge Oudraat, *Combating Terrorism*, 26 WASH. Q. 163 (2003).

37. See generally M. Cherif Bassiouni, *Legal Control of International Terrorism: A Policy-Oriented Assessment*, 43 HARV. INT'L L.J. 83 (2002).

38. See The Secretary-General, *Report of the Secretary-General on Measures to Eliminate International Terrorism*, delivered to the General Assembly, U.N. DOC. A/48/267/Add.1 (Sept. 21, 1993).

39. *Warning Over War on Terror*, BBC NEWS, May 28, 2003, available at http://news.bbc.co.uk/2/hi/uk_news/politics/2943192.stm (last visited Dec. 8, 2005).

misunderstandings among people belonging to different religions have worsened since then. It is important that the international community take stock of the situation and, as underlined in the U.N. Secretary General recent report, take steps to ensure “larger freedom.”⁴⁰ There is a need for a paradigm shift in the approach to responding to terrorism and it ought to include the need for development policies as well as human rights protection, all within a rule-of-law framework.⁴¹ This is the only way by which we can begin to solve the problem.⁴² Given the fact that roots of the problem of terrorism lies in certain historical and political issues that have survived for many years and have been systematically manipulated by people with vested interests, the international community needs to be mindful of the challenge. This is not just a law enforcement issue- even though some law enforcement strategies can help in preventing and investigating terrorism-related crimes. The core problem is much more than that, and this is where the question of “larger freedom” assumes significance. Larger freedom includes the need for our societies to move towards guarding themselves from threats to human security that go beyond the problem of terrorism—risks posed by poverty and other forms of impoverishment, unemployment, corruption and lack of state capacity to manage natural disasters and infectious diseases, lack of sincere efforts to tackle global warming and climate change etc.

II. OVERVIEW OF THE PROBLEM OF TERRORISM IN THE GLOBAL CONTEXT

Terrorism is a serious problem that has affected numerous countries for many years. However, the problem of terrorism received international attention and serious global scrutiny only after the 9/11 attacks in New York and Washington D.C. In fact, this sudden attention to a problem that has been prevailing for many years has been the subject matter of criticism by some countries and its people.⁴³ There is an emerging global consensus that terrorism affects people in a serious manner and violates the freedom from fear. The randomness of a tube station or roadside bomb has a very powerful scare-

40. See *In Larger Freedom*, *supra* note 4.

41. See Robert S. Summers, *The Principles of the Rule-of-Law*, 74 NOTRE DAME L. REV 1691 (1999).

42. For understanding the official approach of the U.S., see WHITE HOUSE, NATIONAL STRATEGY FOR COMBATING TERRORISM (2003), available at <http://www.whitehouse.gov/news/releases/2003/02/20030214-7.html> (last visited Nov. 16, 2005).

43. For example, the problem of LTTE in Sri Lanka and the violence in Kashmir are glaring examples of attacks against civilian population by armed groups engaging in a political struggle. See generally U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—SRI LANKA (2004), available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41744.htm> (last visited Nov. 16, 2005).

message attached- practically anyone who is unlucky to be present at the spot of attack can be killed or seriously injured. A society that fears cannot achieve the kind of goals its people want to achieve. Whenever there is a terrorist attack, victimizations take place.⁴⁴ The direct consequences of terror attacks are: one, terrorist attacks result in victimization of the people who get killed, injured or otherwise affected by the actual attacks themselves; two, the family members of those victims of terror attacks are also affected because of their loved ones being directly involved; and thirdly, the society in which the terrorist attacks took place becomes a victim whereby people who live in that society begin to live with a sense of fear and a lack of freedom to pursue their goals.

Some of the indirect consequences of terror attacks are: first, the contemporary responses to the problem of terrorism has been to strengthen the law enforcement and intelligence machinery so that stringent measures are imposed on society, including passing of draconian laws that violate human rights, civil liberties and compromise privacy rights; second, the occurrence of racial profiling and hate crimes against people belonging to certain religious and racial groups;⁴⁵ third, rule-of-law is undermined both domestically and internationally due to certain responses adopted by governments with a view to ensuring national security, including use of torture and other extreme measures in interrogating suspects; and fourth, development takes a back seat.

Once a terrorist attack takes place in a country, regardless of the human consequences of these attacks, the entire preoccupation of the legislative, executive, and the judicial apparatus of a country tends to focus on this problem. This is because terrorism challenges the state's legitimate monopolization of violence and threatens its claims to be the protector of citizens. Micro and macroeconomic problems, poverty in poor countries, third world debt, and even other major issues that affect humanity at large, like global warming and climate change, tend to become secondary, and resources that would have been otherwise directed at solving these issues are diverted towards fighting terrorism. Sadly, the amount of resources (financial and human) that are put into tackling the problem of terrorism have not even closely matched the results gained in terms of ensuring greater security. Sometimes, the strategies used to fight terrorism may actually incite greater threats. While it is possible that many potential terrorist attacks may have been averted, given the fact that the approach has not helped in providing a sense of greater security, there is a need

44. The responses to terrorism by the law enforcement agencies also produce victimization. For example, the world witnessed the shooting of an innocent Brazilian electrician in London mistaken to be a terrorist suicide bomber. See Glenn Frankel, *Man Shot Dead by British Police Was Innocent Brazilian Citizen—Bystander Mistaken for Suspect in Failed Bomb Attacks*, WASH. POST, July 24, 2005, at A24, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/23/AR2005072300987.html> (last visited Sept. 30, 2005).

45. See Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002).

for a serious reassessment. The possibility that anti-terror crusades enrich and fortify conservative elements that thrive on real and imagined threats makes this a complex issue of misappropriation of causes by vested interest groups.

There is also a tendency to label acts of terrorism, at times, in a whimsical manner depending upon the country in which such acts took place or the alleged organization or individual who carried out these attacks. The problem becomes even more acute when one of the permanent members of the U.N. Security Council is involved. This kind of labeling of acts of violence against civilian population as "terrorist acts" does not go well with countries that are not economically and politically powerful and there is a feeling of disenchantment centering on whose lives matter more and whose matter less. It is not possible to develop a true global consensus against a problem as serious as that of terrorism until and unless the powerful countries take stock of their policies and address these issues in an objective and fair manner.

Unfortunately, the so-called "war on terror" that was pursued in Afghanistan⁴⁶ and Iraq⁴⁷ has brought with it problems of legitimacy of humanitarian intervention⁴⁸ and also the legality of the Iraq war, prompting the U.N. Secretary General Mr. Kofi Annan to call the Iraq war "illegal."⁴⁹ Multilateralism cannot work selectively and hence, the global war on terror is also not working effectively. Professor Ramesh Thakur, Senior Vice Rector of the United Nations University and Assistant Secretary General of the U.N., observed quite rightly that: "...Washington cannot construct a world in which all others have to obey universal norms and rules, while it can opt out whenever, as often, and for as long as it likes on such norms concerning nuclear tests, land mines, international criminal prosecution, climate change, and other regimes."⁵⁰ Double standards in world affairs have reached an all-time high in the current unipolar system.

It is important to understand that this is an area of law and public policy where law (domestic and international), politics (domestic and international),

46. See generally Jordan J. Paust, *Use of Armed Force against Terrorists in Afghanistan, Iraq and Beyond*, 35 CORNELL INT'L L.J. 533 (2002).

47. See generally Mohammed Ayoob, *The War against Iraq: Normative and Strategic Implications*, in WARS ON TERRORISM AND IRAQ: HUMAN RIGHTS, UNILATERALISM AND U.S. FOREIGN POLICY (Thomas G. Weiss et al. eds., 2004).

48. Paust, *supra* note 46.

49. See *Iraq War Illegal, Says Annan*, BBC NEWS, Sept. 16, 2004, http://news.bbc.co.uk/2/hi/middle_east/3661134.stm (last visited Nov. 16, 2004); For an interesting article on the human rights implications of the Iraq war, see Michael C. Davis, *Human Rights and the War in Iraq*, 4 J. HUM. RTS. 1 (2005).

50. *Diplomacy's Odd Couple, the U.S. and the UN*, UNUUPDATE (July–Aug. 2002) (The Newsletter of United Nations University and its network of research and training centres and programmes), available at http://update.unu.edu/archive/issue19_2.htm (last visited Sept. 30, 2005).

ethics, and international governance come into contact with each other and the challenge is to bring the common humanity of the international community to address the problem. It is notable that, at least in a rhetorical sense, this common humanity was brought together in passing the Millennium Declaration⁵¹ in 2000.⁵² It is another matter that states have failed to fulfill the commitments that were made and are far from actually fulfilling the Millennium Development Goals (MDGs).⁵³ The intentions and resources of the states to recognize and pursue the MDGs⁵⁴ ought to be put in place.

III. REPORT OF THE UN SECRETARY GENERAL'S HIGH-LEVEL PANEL ON THREATS, CHALLENGES AND CHANGE

The U.N. Secretary General Mr. Kofi Annan constituted a High-level Panel on global security threats and reform of the international system on November 3, 2003.⁵⁵ The panel was "tasked with examining the major threats and challenges the world faces in the broad field of peace and security, including economic and social issues insofar as they relate to peace and security, and making recommendations for the elements of a collective response."⁵⁶ In the Executive Summary to the report, the panel observed that "there are six clusters of threats which the world must be concerned with now and in the decades ahead: war between States; violence within states, including civil wars, large-scale human rights abuses and genocide; poverty, infectious disease and environmental degradation; nuclear, radiological, chemical and biological weapons; terrorism; and transnational organized crime."⁵⁷ The fact that the panel recognized these clusters of threats demonstrated the importance of taking a holistic perspective on threats that are affecting humanity. Further, it also brought to the forefront the need for collective action within the U.N. as the relevance and importance of each of these threats may vary from country to

51. See G.A. Res. 55/2, U.N. Doc. A/RES/55/2 (Sept. 8, 2000), available at www.un.org/millennium/declaration/ares552e.htm (last visited Sept. 30, 2005).

52. See generally The Secretary-General, *Report of the Secretary-General on the Implementation of the United Nations Millennium Declaration*, ¶ 39, delivered to the General Assembly, U.N. Doc. A/59/282 (Aug. 27, 2004).

53. For a comprehensive understanding the human rights issues relating to the Millennium Development Goals (MDGs), see Philip Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals*, 27 HUM. RTS. Q. 755 (2005).

54. See generally UNITED NATIONS, U.N. MILLENNIUM DEVELOPMENT GOALS, available at <http://www.un.org/millenniumgoals/> (last visited Sept. 30, 2005).

55. *More Secure World*, *supra* note 1.

56. *Id.*

57. *Id.*

country and society to society.⁵⁸ Discussing the policies for prevention of threats, it was quite rightly observed that, "Development has to be the first line of defense for a collective security system that takes prevention seriously. Combating poverty will not only save millions of lives but also strengthen States' capacity to combat terrorism, organized crime and proliferation. Development makes everyone more secure. There is an agreed international framework for how to achieve these goals, set out in the Millennium Declaration⁵⁹ and the Monterrey Consensus, but implementation lags."⁶⁰

The recognition of development as a key issue and as a first line of defense against threats, including terrorism, is significant for a number of reasons. There have been many debates on this issue in the context of understanding the causes of terrorism.⁶¹ Discussing the causes of terrorism, in the chapter on economic factors, Red Robert Gurr observed, "...structured inequalities within countries are breeding grounds for violent political movements in general and terrorism specifically."⁶² The fact of the matter is that development can help in creating more equal societies which are less fertile grounds for breeding terrorism. While lack of development may certainly not be an excuse for terrorist acts, it certainly is a contributing factor. The issue of development cuts across all six clusters of threats mentioned in the report. It has the potential to act as a strong deterrent against all sorts of threats and to provide a collective security system. But the real problem comes when states tend to choose among the threats they perceive to be most urgent from their perspective or, alternatively put, to prioritize them. Any attempts to do such random choosing of the threats, thereby giving more attention to some threats and ignoring others, will ultimately affect the capacity of the international community to develop a collective security system.⁶³ While the thematic representation of the threats and their relationship have been well presented in the report, the report could have also underlined the need for individual states not to engage in choosing

58. See generally, Anne-Marie Slaughter, *Security, Solidarity, And Sovereignty: The Grand Themes of UN Reform*, 99 AM. J. INT'L L. 619 (2005).

59. See U.N. MILLENNIUM PROJECT, *INVESTING IN DEVELOPMENT: A PRACTICAL PLAN TO ACHIEVE THE MILLENNIUM DEVELOPMENT GOALS* (2005), available at www.unmillenniumproject.org/documents/MainReportChapter0Frontmatter-highres.pdf (last visited Nov. 16, 2005).

60. *More Secure World*, *supra* note 1.

61. See generally J.M.B. Porter, *Osama Bin-Laden, Jihād, and Sources of International Terrorism*, 13 IND. INT'L & COMP. L. REV. 871 (2003).

62. ADDRESSING THE CAUSES OF TERRORISM, THE INTERNATIONAL SUMMIT ON DEMOCRACY, TERRORISM AND SECURITY, THE CLUB DE MADRID SERIES ON DEMOCRACY AND TERRORISM 20 (2005), available at <http://www.safe-democracy.org/docs/CdM-Series-on-Terrorism-Vol-1.pdf> (last visited Sept. 30, 2005).

63. Anne Orford, *The Politics of Collective Security*, 17 MICH. J. INT'L L. 373 (1996).

their own certain threats and addressing them, while ignoring those of others. Treating terrorism as a zero-sum-game leads to a lose-lose scenario for all except the terrorists. The summary of recommendations for addressing the threat due to terrorism is quite comprehensive and helpful.⁶⁴

IV. REPORT OF THE UN SECRETARY GENERAL, "IN LARGER FREEDOM: TOWARDS DEVELOPMENT, SECURITY AND HUMAN RIGHTS FOR ALL"

In March 2005, U.N. Secretary General Kofi Annan, submitted a report to the U.N. General Assembly entitled: "In Larger Freedom: Towards Development, Security and Human Rights for All."⁶⁵ The core philosophy behind this report is clearly reflected in the words of the Secretary General in a statement to the General Assembly in which he observed, "What I am proposing amounts to a comprehensive strategy. It gives equal weight and attention to the three great purposes of this Organization: development, security and human rights, all of which must be underpinned by the rule-of-law."⁶⁶

The geo-political context in which the report was presented provides scope for bringing together the heads of state and government to see each other's viewpoint on important issues affecting the international community. The Executive Summary of the report notes:

The world must advance the causes of security, development and human rights together, otherwise none will succeed. Humanity will not enjoy security without development, it will not enjoy development without security, and it will not enjoy either without respect for human rights. . . . Hence, the cause of larger freedom can only be advanced by broad, deep and sustained global collaboration among states.⁶⁷

64. On the problem of terrorism, the summary of recommendations of the high-level panel report observed that the United Nations, with the Secretary-General taking a leading role, should promote a comprehensive strategy against terrorism, including: (a) Dissuasion, working to reverse the causes or facilitators of terrorism, including through promoting social and political rights, the rule-of-law and democratic reform; working to end occupations and address major political grievances; combating organized crime; reducing poverty and unemployment; and stopping State collapse; (b) Efforts to counter extremism and intolerance, including through education and fostering public debate; (c) Development of better instruments for global counter-terrorism cooperation, all within a legal framework that is respectful of civil liberties and human rights, including in the areas of law enforcement; intelligence -sharing, where possible; denial and interdiction, when required; and financial controls; (d) Building State capacity to prevent terrorist recruitment and operations; (e) Control of dangerous materials and public health defense. *In Larger Freedom*, *supra* note 4, at 82-83, ¶¶ 38(a)-(e).

65. *Id.*

66. U.N. Secretary-General, Statement to the General Assembly (Mar. 21, 2005), <http://www.un.org/largerfreedom/sg-statement.html> (last visited Sept. 30, 2005).

67. *In Larger Freedom*, *supra* note 4.

It is important to note that the report of the Secretary General developed the concepts of 'collective security' and 'cluster of threats' as observed in the High-level Panel's report.⁶⁸ However, this report goes further. It provides a philosophical and practical coherence to the notion of collective security by drawing from the U.N. Charter's words, "larger freedom." While human rights and development⁶⁹ have been discussed before, the inclusion of security into the focus of the attention of the international community is desirable, but is not without debate.⁷⁰ The notion of "larger freedom" has itself been contested in the past and traces of such contest can be seen in the debates that prevailed during the passing of the International Covenant on Civil and Political Rights (ICCPR)⁷¹ and the International Covenant on Economic and Social Rights (ICESCR).⁷² We have come a long way since the time when grave doubts were expressed about whether there can be anything like economic and social rights. The integral understanding of civil and political rights (CPR) and economic and social rights (ESR)⁷³ is, in my view, recognizing the notion of "larger freedom." Another facet of "larger freedom" is the recognition of different types of threats to humanity and the need for preventing those threats, with a view to ensuring the three freedoms: freedom from want, freedom from fear, and freedom to live in dignity. The report has provided an elaborate discussion on each of these freedoms and how national strategies and global action need to be tuned to ensure that each of those freedoms is fully protected.⁷⁴

In the section on freedom from fear, the report underlines the need for a "shared assessment" of threats and a "common understanding" of the

68. See Jennifer Moore, *Collective Security with a Human Face: An International Legal Framework for Coordinated Action to Alleviate Violence and Poverty*, 33 DENV. J. INT'L L. & POL'Y 43 (2004).

69. See Hans-Otto Sano, *Development and Human Rights: The Necessary, but Partial Integration of Human Rights and Development*, 22 HUM. RTS. Q. 734 (2000).

70. PETER UVIN, HUMAN RIGHTS AND DEVELOPMENT 122–66 (2004); Peter Uvin, *On High Moral Ground: The Incorporation of Human Rights by the Development Enterprise*, 17 PRAXIS 1 (2002), available at fletcher.tufts.edu/praxis/xvii/Uvin.pdf; Hugo Slim, *A Response to Peter Uvin: Making Moral Low Ground: Rights as the Struggle for Justice and the Abolition of Development*, 17 PRAXIS 1 (2002), available at fletcher.tufts.edu/praxis/xvii/Slim.pdf (last visited Nov. 16, 2005).

71. International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. DOC. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

72. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. DOC. A/6316 (Dec. 16, 1966), 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

73. *Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council*, ¶ 10, delivered to the Economic and Social Council, U.N. DOC. E/2002/68 (May 20, 2002).

74. See Shashi Tharoor, *Are Human Rights Universal?*, PROJECT SYNDICATE (June 2002), available at www.project-syndicate.org/commentaries/commentary_text.php4?id=890&lang=1&m=series (last visited Sept. 30, 2005).

obligations of the states.⁷⁵ Like the High-level panel report, the U.N. Secretary General's report takes a broader approach to threats and observes:

The threats to peace and security in the 21st century include not just international war and conflict, but terrorism, weapons of mass destruction, organized crime and civil violence. They also include poverty, deadly infectious disease and environmental degradation, since these can have equally catastrophic consequences. All of these threats can cause death or lessen life chances on a large scale. All of them can undermine States as the basic unit of the international system.⁷⁶

This argument is very important. Through it, the U.N. Secretary General is trying to speak to countries which perceive their own understandings of threat perceptions to be most important and urgent. However, the difficulty lies in making states hear, understand, and appreciate this. The fact is that non-recognition of different threats can potentially result in the undermining of States as the fundamental unit of the international system. But this does not give any space, whatsoever, to the international civil society and the global society movements that have, in recent times, seriously contested the state-centric international system. Further, it is conceivable that this argument will not be accepted by powerful states, who in their unilateralist approach to international governance will continue to function with their own national interests in mind. There is no doubt that the notion of collective security is the only way by which we can begin to solve the problem of terrorism at a global level. The fact that Annan emphasizes the upholding of larger freedom through development, security, and enforcing human rights for all ought to be well received.⁷⁷ But moving beyond the powerful rhetoric of this argument, contemporary state practice of powerful states like the U.S.A. and U.K. demonstrate little support to this notion, besides giving lip service. The report has observed that:

The strategy against terrorism must be comprehensive and should be based on five pillars: it must aim at dissuading people from resorting to terrorism or supporting it; it must deny terrorists access to funds and materials; it must deter States from sponsoring terrorism; it must

75. *In Larger Freedom*, *supra* note 4, at 24, ¶ 75.

76. *Id.* at 24–5, ¶ 78.

77. See generally Mac Darrow and Amparo Tomas, *Power, Capture and Conflict: A Call for Human Rights Accountability in Development Cooperation*, 27 HUM. RTS. Q. 471 (2005).

develop State capacity to defeat terrorism; and it must defend human rights.⁷⁸

There can be few disagreements on these five pillars, but the key issue still remains as to how the powerful states are going to prioritize the attention that needs to be given among the five pillars. For example, it is a well known fact that the U.N. Secretary General's fifth pillar, "it must defend human rights",⁷⁹ has taken a significant beating due to the war on terror. There are numerous instances of the war on terror compromising human rights and civil liberties.⁸⁰

V. RESPONSES TO TERRORISM WITHIN THE RULE-OF-LAW FRAMEWORK

The response to terrorism ought to be based on a holistic and inter-related understanding of human security, human rights, and human development—and all within the human rights and the rule-of-law framework.⁸¹ This is a significant challenge and herein lays the core of the problem.⁸² The contemporary nature of threats in the form of catastrophic terrorism caused by suicide bombers or others who are systematically engaged in committing similar acts are indeed acts of terrorism.⁸³ The domestic and international legal framework that is being put in place in the form of responses to terrorism is desirable.⁸⁴ But what is not acceptable is when individual states resort to unilateral actions that are not justified within the international law framework, or commit acts that violate the Geneva Conventions or the Convention Against Torture.⁸⁵ Further, the counter-terrorist legal framework should not violate

78. *In Larger Freedom*, *supra* note 4, at 26, ¶ 88.

79. *Id.*

80. *See generally*, Kenneth Roth, *The Fight against Terrorism: The Bush Administration's Dangerous Neglect of Human Rights*, in *WARS ON TERRORISM AND IRAQ: HUMAN RIGHTS, UNILATERALISM AND U.S. FOREIGN POLICY* 247, 113–131 (Thomas G. Weiss et al. eds., 2004).

81. For further reading, *see* Jack Donnelly, *International Human Rights: Unintended Consequences of the War on Terrorism*, in *WARS ON TERRORISM AND IRAQ: HUMAN RIGHTS, UNILATERALISM AND U.S. FOREIGN POLICY* 247, 98–112 (Thomas G. Weiss et al. eds., 2004).

82. *See generally* Paul Hoffman, *Human Rights and Terrorism*, 26 *HUM. RTS. Q.* 932 (2004).

83. For an international relations perspective on terrorism, *see* Shashi Tharoor, *September 11, 2002: Understanding and Defeating Terrorism One Year Later*, 27 *FLETCHER F. WORLD AFF.* 9 (2003).

84. For a critical perspective on responses to terrorism, *see* Martha Crenshaw, *Unintended Consequences: How Democracies Respond to Terrorism*, 21 *FLETCHER F. WORLD AFF.* 153 (1997). *See also Note*, *Responding to Terrorism: Crime, Punishment and War*, 115 *HARV. L. REV.* 1217 (2002) (discussing past acts of terror and the United States' response to them).

85. For an extensive discussion of the question as to what constitutes terrorism, *see* Gross, *supra* note 7. *See also* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. GAOR, Supp. No. 51, U.N. Doc. A/39/51 (Dec. 10, 1984). The Convention covers all "persons" and is not limited to categories of detainees such as prisoners of war. *Id.*

international human rights norms and the domestic constitutional and human rights guarantees.⁸⁶ There is a specific challenge that is being posed to international human rights law.⁸⁷ Besides the fact that these actions undermine the moral legitimacy of states, they also undermine the institutional legitimacy of the United Nations. The rule-of-law framework,⁸⁸ both domestically and internationally, cannot have different types of rules and principles depending upon the powerful nature of the country involved. Individuals and states ought to abide by the rule-of-law framework.⁸⁹ Further, use of force should not be the sole response as it is given to believe in the war on terror. Individual states, while passing counter terrorist legislation, ought to take into consideration the human rights implications and its potential for abuse by law enforcement authorities.⁹⁰ Writing about the reference to war on terror, Mrs. Mary Robinson, Former U.N. High Commissioner for Human Rights observed:

That the language of being "at war with terrorism" was used from the beginning has direct, and nefarious, implications. It brought a subtle—or not so subtle—change of emphasis in many parts of the world: order and security became priorities that trumped all other concerns. As was often the case in the past during times of war, the emphasis on national order and security frequently involved curtailment of democracy and human rights. . . . Questions arise as to when, if ever, this war on terrorism will be won. Are we, as the novelist and commentator Gore Vidal⁹¹ has characterized it, embarked on a Perpetual War for Perpetual Peace?⁹²

86. See *Terrorism and Human Rights: Preliminary Report Prepared by Ms. Kalliopi K. Koufa*, U.N. DOC. E/CN.4/Sub.2/1999/27 (June 7, 1999), available at www.un.org/documents/ecosoc/cn4/sub2/e-cn4sub2_99_27.pdf (last visited Sept. 30, 2005); see also *Terrorism and Human Rights: Progress Report Prepared by Ms. Kalliopi K. Koufa*, U.N. DOC. E/CN.4/Sub.2/2001/31 (June 27, 2001), available at www.un.org/documents/ecosoc/cn4/sub2/e-cn4sub2_01_31.pdf (last visited Sept. 30, 2005).

87. See, e.g., David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101, 120–21 (2002); and for a response, Hillary Charlesworth, *Author, Author!: A Response to David Kennedy*, 15 HARV. HUM. RTS. J. 127 (2002).

88. Richard H. Fallon, Jr., *"The Rule-of-Law" as a Concept in Constitutional Discourse*, 97 COLUM. L. REV. 1 (1997).

89. See generally Rights at Risk, *supra* note 14.

90. For understanding this discussion in the context of India, see C. Raj Kumar, *Human Rights Implications of National Security Laws in India: Combating Terrorism while Preserving Civil Liberties*, 33 DENV. J. INT'L L. & POL'Y 195 (2005).

91. GORE VIDAL, *PERPETUAL WAR FOR PERPETUAL PEACE* (2002). This was referred to in Mary Robinson, *Foreword*, in *WAR ON TERRORISM AND IRAQ: HUMAN RIGHTS, UNILATERALISM AND U.S. FOREIGN POLICY* 247, xvii (Thomas G. Weiss et al. eds., 2004).

92. Mary Robinson, *supra* note 91.

The fact that young people in different parts of the world are ready and willing to die for a cause (however legitimate or illegitimate it may be) seems there is something fundamental that has gone wrong. It is not acceptable to justify these actions because of certain policies that have impacted certain people or populace belonging to particular religions. But the fact of the matter is that killing innocent civilians cannot be justified for any cause, including as a response to the killing of innocent civilians. Further, suicide bombing poses a specific type of danger that is not being properly responded to.⁹³ Under these circumstances, there is a more urgent need for the international community to help in building societies which are based on principles of democracy, good governance, and human rights and development so that they do not serve as recruiting grounds for terrorists.

Further, the war on terror should be limited by principles of the rule-of-law and human rights.⁹⁴ Unfortunately, there have been numerous instances (ongoing) that have not given any encouraging signals that even otherwise, responsible countries have resorted to such measures that have violated principles of international law, international human rights law, and international humanitarian law. In all these matters, enforcement remains a key problem.⁹⁵ The U.N. Secretary General has quite rightly brought to the attention of the international community to this issue in his report, when he observed that:

Terrorists are accountable to no one. We, on the other hand, must never lose sight of our accountability to citizens all around the world. In our struggle against terrorism, we must never compromise human rights. When we do so, we facilitate achievement of one of the terrorist's objectives. By ceding the moral high ground, we provoke tension, hatred and mistrust of Governments among precisely those parts of the population where terrorists find recruits.⁹⁶

In other words, hawkish responses feed into the loop of violence and are exactly the kind of appetizers hoped for by terrorists. He has clearly underlined the need for counter-terrorist measures to be in conformity to human rights, and recommended to the Commission on Human Rights the appointment of a special rapporteur to specifically deal with this issue.

93. Scott Atran, *Mishandling Suicide Terrorism*, 27 WASH. Q. 67 (2004).

94. HUMAN RIGHTS WATCH, IN THE NAME OF COUNTER-TERRORISM: HUMAN RIGHTS ABUSES 10-11 (2003), available at www.hrw.org/un/chr59/counter-terrorism-bck.pdf (last visited Nov. 16, 2005).

95. See Harold Hongju Koh, *How is International Human Rights Law Enforced?*, 74 IND. L.J. 1397 (1999).

96. *In Larger Freedom*, *supra* note 4, at 27, ¶ 94.

The Lawyers Committee for Human Rights, a U.S.-based NGO in its September 2003 report entitled, "Assessing the New Normal: Liberty and Security for the Post-September 11 United States" quite rightly asserted:

The United States' detachment from its own rule-of-law principles is having a profound effect on human rights around the world. Counter-terrorism has become the new rubric order under which opportunistic governments seek to justify their actions, however offensive to human rights. Indeed, governments long criticized for human rights abuses have publicly applauded U.S. policies, which they now see as an endorsement of their own longstanding practices.⁹⁷

What we are witnessing is all-round degradation of the rights environment, led at the forefront by the most powerful state.

The rule-of-law that is being discussed is two-dimensional. First, it is the domestic rule-of-law which the counter-terrorist measures ought to conform to. This means that the legislation being passed to counter terrorism and other policies that are being implemented worldwide (e.g., the shoot-to-kill policy in the U.K.) ought to conform to domestic legal, constitutional, and other human rights legislation. They should also conform to the judicial decisions that have interpreted the law, providing the scope of its enforcement. Further, whether the particular counter-terrorist measures are in conformity to the legislation ought to be determined by an independent judicial tribunal. The countries should also establish human rights commissions⁹⁸ and/or other commissions such as the Independent Commission for Police Complaints, which can receive complaints against the law enforcement authorities. It is important that counter-terrorist measures do not discourage civil society activism and other forms of genuine criticism or other forms of legal and non-violent resistance to draconian laws and policies. These are part of the protection of the domestic rule-of-law framework.

The international rule-of-law framework is protected on the basis of countries adhering to the principles of international law, international human rights, and international humanitarian law. It is unfortunate that contemporary history has numerous examples when international rule-of-law has been undermined. There is a responsibility on the part of all nations, including the most powerful ones, to once again reiterate that respect for the rule-of-law should be the basis by which peace and security can be ensured. Otherwise,

97. LAWYERS COMMITTEE FOR HUMAN RIGHTS, *ASSESSING THE NEW NORMAL: LIBERTY AND SECURITY FOR THE POST-SEPTEMBER 11 UNITED STATES V* (2003) [hereinafter *LAWYERS COMMITTEE*].

98. For a critical perspective on National Human Rights Commissions (NHRCS), see C. Raj Kumar, *National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights*, 19 *Am. U. Int'l L. Rev.* 259 (2003).

hypocrisy becomes institutionalized in the international system where words become meaningless if unsupported by actions.

The Lawyers Committee for Human Rights, in the same report that was previously discussed, gives the negative consequences of not respecting the rule-of-law and observed:

The U.S. government can no longer promise that individuals under its authority will be subject to a system bound by the rule-of-law. In a growing number of cases, legal safeguards are now observed only so far as they are consistent with the chosen ends of power. Yet, too many of the policies that have led to this new norm not only fail to enhance U.S. security . . . but also exact an unnecessarily high price in liberty. For a government unbound by the rule-of-law presides over a society that is something less than free.⁹⁹

In a similar vein, recently, in a statement entitled “On Terrorists and Torturers” issued by the UN Office of the High Commissioner for Human Rights to mark the Human Rights Day 2005, she observed: “The law provides the proper balancing between the legitimate security interests of the State with the individual's own legitimate interests in liberty and personal security. It must do so rationally and dispassionately even in the face of terror. For even though it may be painted as an obstacle to efficient law enforcement, support for human rights and the rule of law actually improves human security. Ultimately, respect for the rule of law lessens the likelihood of social upheaval, creating greater stability both for a given society and for its neighbors. Pursuing security objectives at all costs may create a world in which we are neither safe nor free. This will certainly be the case if the only choice is between the terrorists and the torturers”.¹⁰⁰

VI. ROLE OF INTERNATIONAL INSTITUTIONS IN ENSURING LARGER FREEDOM

‘Larger freedom’ can be ensured only if development, security, and human rights are assured for all. This means that the international institutions which are working to deal with different issues need to be empowered so that they are in a position to respond to different types of threats. The reform that is being suggested both in the High-level Panel’s report and the U.N. Secretary General’s report are indeed positive developments. The U.N. Office of the High Commissioner for Human Rights will have an important role to play. Already,

99. LAWYERS COMMITTEE, *supra* note 97.

100. Louise Arbour, Statement by U.N. High Commissioner for Human Rights, Dec. 7, 2005, <http://www.unhchr.ch/huricane/hurricane.nsf/view01/3B9B202D5A6DCDBCC12570D00034CF83?opendocument> (last visited Dec. 8, 2005).

this office¹⁰¹ has taken efforts in the past to bring in greater attention to the economic and social rights and also issues relating to extreme poverty¹⁰² and the right to development.¹⁰³

The UNDP has also played an important role in developing rights-based approaches to poverty reduction and other issues relating to development and governance.¹⁰⁴ Relating to development and security, both human rights are something that can have a significant impact on the work of the U.N. Office for the High Commissioner for Human Rights. While there are special rapporteurs for some of these issues, it is time that the commission takes this matter to the domestic human rights machinery. In particular, it will be very helpful to involve the national human rights institutions (NHRIs).

The international human rights framework and other international legal frameworks, when it comes enforcing international law in the states, need to rely on the domestic enforcement machinery. It is here that the national human rights institutions and/or similar commissions come to play an important role. The NHRIs can take initiatives at the domestic level in relating the notion of "larger freedom" to the domestic constitutional, human rights, and legislative measures that are in place. As discussed earlier, there are profound human rights implications of counter-terrorism measures and draconian laws that are being passed in different countries. If the concept of 'larger freedom' is being discussed at the domestic level, then it is possible to prevail upon the states that we need to move towards human security from our narrow and traditional understanding of state or national security. This is not to undermine the existing importance of the state, but rather to further strengthen the capacity of the state to respond to a variety of threats. In this regard, impact of such an approach will have good effect on both developing and developed countries.

In developing countries, which are also taking counter-terrorism measures, there will be a better understanding of the causes of terrorism and also more viable and sustainable responses to terrorism with a view to expanding freedoms by ensuring development and human rights. This will relate well with the efforts of the international community to achieve the MDGs within a timeframe and help in fulfilling the mandate of the Special Rapporteurs on the Right to Development and Extreme Poverty and Human rights, both of which are

101. Human Rights and Extreme Poverty, C.H.R. Res. 2004/23, U.N. ESCOR, Comm'n on Hum. Rts., 60th Sess., ¶ 10(e), U.N. Doc. E/CN.4/RES/2004/23 (2004).

102. U.N. Office of the High Commissioner for Human Rights, *Draft Guidelines: Human Rights Approach to Poverty Reduction Strategies*, ¶ 13 (2002), available at www.unhchr.ch/development/povertyfinal.html (last visited Sept. 30, 2005)

103. G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, at 186–87, U.N. Doc. A/41/53 (1987).

104. UNITED NATIONS DEVELOPMENT PROGRAMME, POVERTY REDUCTION AND HUMAN RIGHTS: A PRACTICE NOTE (2003), available at www.undp.org/poverty/practicenotes/povertyreduction-humanrights0603.pdf (last visited Sept. 30, 2005).

inextricably connected to the idea of 'larger freedom.' As far as developing countries are concerned, it will provide a firm basis for promoting multilateralism in the efforts to counter terrorism, and this effort should go along with the efforts to respond to other threats. The fact of the matter is that both developed and developing countries need to work together in creating a more secure world. Collective security means that there is need for partnership at all levels and most importantly, to realize that security, development and human rights—are all related to each other and indeed help in reinforcing each other. Unilateralism cannot work under the rubric of war on terror. There is no doubt that for the fight against terrorism to succeed, there is a need for seriously empowering the role of international institutions in a genuine manner. It is important for the U.S. to understand this; Shashi Tharoor, U.N. Under Secretary General for Communications and Public Information, in an article in *Foreign Affairs* observed:

The U.N., from the start, assumed the willingness of its members to accept restraints on their own short-term goals and policies by subordinating their actions to internationally agreed rules and procedures, in the broader long-term interests of world order. . . . The U.N. was meant to help create a world in which its member states would overcome their vulnerabilities by embedding themselves in international institutions, where the use of force would be subjected to the constraints of international law. Power politics would not disappear from the face of the earth but would be practiced with due regard for universally upheld rules and norms. Such a system also offered the United States—then, as now, the world's unchallenged superpower—the assurance that other countries would not feel the need to develop coalitions to balance its power. Instead, the U.N. provided a framework for them to work in partnership with the United States.¹⁰⁵

VII. ROLE OF NGOS¹⁰⁶ AND THE DOMESTIC AND INTERNATIONAL CIVIL SOCIETY MOVEMENTS

The non-governmental organizations have an important role to play in the fight against terrorism, particularly with regard to activism.¹⁰⁷ The role of civil society is important and should be seen in the light of judicial protection of

105. Shashi Tharoor, *Why America Still Needs the United Nations: The Power of Legitimacy*, 82 FOR. AFF. 5 (2003), available at <http://www.shashitharoor.com/articles/foreignaffairs.html> (last visited Sept. 30, 2005).

106. See Jurij Daniel Aston, *The United Nations Committee on Non-Governmental Organisations: Guarding the Entrance to a Politically Divided House*, 12 EUR. J. INT'L L. 943, 948 (2001).

107. Wendy Schoener, *Non-Governmental Organizations and Global Activism: Legal and Informal Approaches*, 4 IND. J. GLOBAL LEGAL STUD. 537 (1997).

human rights as well as constitutionalism.¹⁰⁸ There are a variety of NGOs worldwide who are working in various issues relating to terrorism. These include not only international human rights NGOs, but also a number of grass-root organizations, religious groups, voluntary groups, aid organizations, and others. As discussed in previous sections, the challenge posed by terrorism is significant and that it is impossible for states and even the inter-governmental organizations to respond adequately. At the community level, the NGOs play a very important role, whether it is to educate the populace about the problem of terrorism or to prevent and dissuade people of different faiths to resort to violence of any kind. This violence may be used either to achieve a legitimate political goal or as hate crimes against people belonging to a particular religion, region or race.

There have been numerous reports of hate crimes or other sorts of attacks against people belonging to the Muslim religion in the aftermath of 9/11 attacks in the U.S., and there are already reports of similar instances in the U.K. after the London bomb attacks. While these were by and large sporadic instances, these raise serious concerns not only among the members of the particular religious community, but also others. In this regard, the NGOs can play a very important role, particularly in educating those people who are involved in interacting with diverse members of the society. NGOs also provide aid and relief during post-conflict situations. It is important that the international community recognize the role of NGOs and to empower them so that they can perform their functions better.¹⁰⁹

One of the strongest and most powerful ways by which the 'war on terror' was challenged, in particular the war against Iraq, was the development of vibrant international civil society¹¹⁰ movements worldwide protesting against the war.¹¹¹ Nelson Mandela has said in this context that the world has two superpowers, the United States and world public opinion. While these efforts were not successful, it provides a strong and clear message to the countries that were engaged in the war in the name of its own people, that there are a vast majority of its citizens who are not in agreement with the decision to go to war.

108. See C. Raj Kumar, *Moving Beyond Constitutionalization and Judicial Protection of Human Rights: Building on the Hong Kong Experience and Civil Society Empowerment*, 26 LOY. L.A. INT'L & COMP. L. REV. 281 (2003).

109. For a critical perspective, see Kerstin Martens, *Examining the (Non-)Status of NGOs*, 10 IND. J. GLOBAL LEGAL STUD. 1 (2003).

110. See generally Gordon A. Christenson, *World Civil Society and the International Rule-of-Law*, 19 HUM. RTS. Q. 724 (1997).

111. Michael W. Foley & Bob Edwards, *The Paradox of Civil Society*, 7 J. DEM. 38, 38-52 (1996).

An empowered civil society is in a position to make the government of the day re-examine its policies and decision and in some circumstances change it.¹¹²

VIII. THE WAY FORWARD

The problem of terrorism has indeed received global attention. The responses it has generated are truly significant and have a profound impact on law, politics and society. At the same time, it is important for the international community to come to terms with the fact that whatever strategies that were evolved for fighting terrorism by pursuing the "war on terror" are just not working. All indications are that the violence has been continuing in the battleground of the war on terror e.g. Iraq and also Afghanistan. The fact of the matter is that it is important for the international community to embrace the U.N. Secretary General's report "in larger freedom" and to accept his recommendations in entirety. However, accepting his recommendation is one thing; moving towards a paradigm shift in pursuing the "war on terror" is another thing.

A number of issues need to be considered. It is important that the international community distinguishes two aspects of terrorism-related violence. The first aspect relates to terrorism in the form of individuals and/organizations involved in criminal acts, organized crime, money laundering, including corruption and using these resources, including connections, for engaging in terrorist activities. The issue of corruption is also a very important dimension to counter-terrorism efforts, insofar as it is related to organized crime, money laundering and other crimes.¹¹³ Corruption affects state capacity to deal with various threats including terrorism. It definitely can compromise state security and it is important to examine corruption from the standpoint of its implications for human rights¹¹⁴ and the rule-of-law.¹¹⁵ This aspect is clearly criminal and the approach ought to be to use the domestic and international law enforcement machinery to ensure that the people who are engaged in these activities are punished.

112. See generally Dana R. Fisher & Jessica F. Green, *Understanding Disenfranchisement: Civil Society and Developing Countries' Influence and Participation in Global Governance for Sustainable Development*, 4 GLOBAL ENV'T'L POL. 65, 65-84 (2004).

113. See generally C. Raj Kumar, *Corruption and Human Rights - Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India*, 17 COLUM. J. ASIAN L. 31 (2003).

114. See C. Raj Kumar, *Corruption in Japan: Institutionalizing the Right to Information, Transparency and the Right to Corruption-Free Governance*, 10 NEW ENG. J. INT'L & COMP. L. 1 (2004).

115. See generally C. Raj Kumar, *Human Rights Approaches of Corruption Control Mechanisms—Enhancing the Hong Kong Experience of Corruption Prevention Strategies*, 5 SAN DIEGO INT'L L.J. 323 (2004).

There is another aspect to the problem of terrorism- a need for greater caution, creativity and political judgment. This concerns the growth of religious fundamentalism and extremism that is being advocated to achieve certain causes. Here, the battle takes place in the minds of youths in many parts of the world and it is clearly an ideological issue, which is given a huge dose of religious extremism. The result is there is a proliferation of thinking, and even discourse, advocating certain acts and/or glorifying, and at times tolerating, acts that are patently unacceptable to humane conduct. The traditional law enforcement approach of dealing with crimes, including crimes relating to terrorism, will not be entirely successful. There is a need for greater engagement within the community and in particular to involve the right thinking members of the particular religious community. The change has to come from within and an environment ought to be created in which violent acts of any kind are not tolerated. But for this change to come within, the international community and in particular the powerful countries have to take responsibility for their actions.

Respect for international law, international human rights law and international humanitarian law should be emphasized so that multilateralism remains the approach to fight global terrorism. International institutions need to be empowered. The fight against terrorism should take place at different levels. While the international community takes efforts to ensure greater security, it is also important to understand security much beyond national security. Along with this, efforts need to be taken to address development issues, including third world aid and debt. The partnership between developing and developed countries should be based upon a sense of common humanity where threats of all kinds are jointly addressed. Thus, national security strategies should bear in mind that human security threats are much wider and that countries formulating these strategies should bear in mind the notion of 'larger freedom.' This will ensure that security and development are achieved within the human rights framework.

Domestically, it is important to recognize that the fight against terror should not take any undue priority to the neglect of other equally important issues relating to development and governance.¹¹⁶ The counter-terrorist laws and practices that are being developed should be based upon greater respect for human rights and that should be within the rule-of-law framework. Further, there is a need for strengthening the working of national human rights institutions, courts and other related departments so that the goal is to achieve larger freedom and in the process, ensure security, development and human rights. The domestic constitutional commitment and laws and regulations ought

116. See generally Saladin Al-Jurf, *Good Governance and Transparency: Their Impact on Development*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 193 (1999).

to be protected in the fight against terrorism so that civil liberties are not undermined.

It is important that the international community recognizes global terrorism as a problem that needs to be tackled by the people themselves, as much by the states. After all, it is civilians who suffer the most from this phenomenon, not faceless bureaucrats or uniformed soldiers. Just as there has been a fair amount of success in seeking partners in development in the form of collaboration with people in developing countries by organizations like the UNDP, even in the fight against terror, there is a need for partnership. This partnership can be with both domestic and international NGOs as well as civil society movements. Worldwide, there are a significant number of people who are ready to join hands with governments to legitimately fight against terrorism. But for this fight to be morally coherent and universally acceptable, it should be based upon principles and not make citizens accomplices in militarist build-ups. The international community ought to speak in one voice along with the international institutions so that terrorism of any kind is not condoned in one part of the world, while condemned in another.

Larger freedom is about ensuring people a variety of choices in their life. These choices are possible only if their security, development and human rights are assured. Values of love, non-violence and fraternity, are essential to the progress of societies and for the common good of the humanity. The present state of anti-terrorism efforts have given little assurance to people who are perpetually in fear of insecurity, who are living without any hope for development and whose human rights are violated day in and day out.